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INTERSTATE COMMERCE COMMISSION

11031

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INTERSTATE COMMERCE COMMISSION

No. 9-3124020

Date NOV 8 1979

Fee \$ 150.00

RECORDATION NO. 11031 Filed 1425

ICC Washington, D. C.

INTERSTATE COMMERCE COMMISSION  
November 7, 1979

Winchester and Western Railroad Company  
Lease Financing Dated as of October 1, 1979

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of Winchester and Western Railroad Company, for filing and recordation, counterparts of the following:

(1) (a) Conditional Sale Agreement dated as of October 1, 1979, between Merrill Lynch Leasing Inc. and Portec, Inc.; and

(b) Assignment of Conditional Sale Indebtedness dated as of October 1, 1979, among The Connecticut Bank and Trust Company, Merrill Lynch Leasing Inc. and Portec, Inc.;

(2) (a) Amended and Restated Lease of Railroad Equipment dated as of October 1, 1979, between Winchester and Western Railroad Company and Merrill Lynch Leasing Inc.; and

(b) Assignment of Lease and Agreement dated as of October 1, 1979, between The Connecticut Bank and Trust Company and Merrill Lynch Leasing Inc.;

NSC NO.

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-B (3) Security Agreement dated as of October 1, 1979, between Merrill Lynch Leasing Inc. and The Connecticut Bank and Trust Company ~~and~~

*we* (4) ~~Purchase Agreement Assignment dated as of October 1, 1979, between Itel Corporation and Merrill Lynch Leasing Inc.~~

The addresses of the parties to the aforementioned agreements are:

Agent:

The Connecticut Bank and Trust Company,  
One Constitution Plaza,  
Hartford, Connecticut 06115.

Manufacturer:

Portec, Inc.,  
1800 Century Boulevard (Suite 6800),  
Atlanta, Georgia 30345.

Lessee:

Winchester and Western Railroad Company,  
In care of UNIMIN Corporation,  
50 Locust Avenue,  
New Canaan, Connecticut 06840.

Owner:

Merrill Lynch Leasing Inc.,  
One Liberty Plaza,  
165 Broadway,  
New York, N. Y. 10080

Itel:

Itel Corporation,  
Rail Division,  
Two Embarcadero Center,  
San Francisco, California 94111.

*we* The equipment covered by the agreements listed above at subparagraphs 1(a) ~~and~~ 1(b) ~~and~~ 4 consists of 175 100-Ton, 4,000 Cubic Foot Covered Hopper Cars bearing the

road numbers of the Lessee WW3051-WW3225 (both inclusive). The equipment covered by the agreement listed above at subparagraph 3 consists of ~~50~~ 100-Ton, 4,000 Cubic Foot Covered Hopper Cars bearing the road numbers of the Lessee WW3001-WW3050 (both inclusive). The equipment covered by the agreements listed above at subparagraphs 2(a) and 2(b) consists of the units of equipment referred to in the next two preceding sentences. Each unit of such equipment bears the legend "Ownership Subject to a Security Interest Filed with the Interstate Commerce Commission". *WRF*

Please cross-reference the Security Agreement and the Amended and Restated Lease of Railroad Equipment with the Lease of Railroad Equipment dated as of June 25, 1979, between Merrill Lynch Leasing Inc. and Winchester and Western Railroad Company, Recordation No. 10585, filed on July 3, 1979, at 2:00 p.m.

Enclosed is our check for \$<sup>(150)</sup>200 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt addressed to the undersigned. *WRF*

Very truly yours,

*William R. Giusti*

William R. Giusti  
As Agent for Winchester and  
Western Railroad Company.

Agatha L. Mergenovich, Secretary,  
Interstate Commerce Commission,  
Washington, D.C. 20423

Encls.

11031 C  
RECORDATION NO. .... Filed 1425

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INTESTATE COMMERCE COMMISSION

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AMENDED AND RESTATED LEASE OF RAILROAD EQUIPMENT

Dated as of October 1, 1979

between

MERRILL LYNCH LEASING INC.,

as Lessor

and

WINCHESTER AND WESTERN RAILROAD COMPANY,

as Lessee

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AMENDED AND RESTATED LEASE OF RAILROAD EQUIPMENT, dated as of October 1, 1979, between Merrill Lynch Leasing Inc., a Delaware corporation, as Lessor (the "Owner"), and Winchester and Western Railroad Company, a Virginia corporation, as Lessee (the "Lessee").

RECITALS:

A. The Owner and the Lessee have heretofore entered into a Lease of Railroad Equipment, dated as of June 25, 1979 (the "Original Lease"), whereby the Owner leased to the Lessee, and the Lessee leased from the Owner, the railroad equipment set forth in Schedule A hereto, together with all additions, modifications or improvements thereto or replacements thereof as contemplated by Section 2.2 (the "Original Equipment").

B. The Owner and the Lessee wish to amend and restate the Original Lease in order, among other things, to provide for the leasing by the Lessee from the Owner of the railroad equipment set forth in Schedule B hereto, or such portion thereof as is delivered and settled for under the terms of this Lease, together with all additions, modifications or improvements thereto or replacements thereof as contemplated by Section 2.1 (the "Additional Equipment"), and to make certain other changes in the Original Lease in connection with the incurring of Conditional Sale Indebtedness (this and certain other capitalized terms used in this Agreement having the meanings set forth in Section 1) by the Owner to finance, in part, the acquisition of the Additional Equipment.

NOW, THEREFORE, the Owner and the Lessee agree that the Original Lease is hereby amended and restated in full as follows:

SECTION 1. Definitions.

Additional Equipment: as defined in Recital B.

Additional Rent: as defined in Section 3.2.

Additions: as defined in Section 9.4.

ADR Deductions: as defined in Section 6.3.



Agent: The Connecticut Bank and Trust Company, a Connecticut banking corporation, in its capacity as agent under the Participation Agreement, and its successors as agent thereunder.

Assignment: the Assignment of Conditional Sale Indebtedness, dated as of the date hereof, among the Manufacturer, the Agent and the Owner, providing for the assignment by the Manufacturer to the Agent of its right, title and interest in and to the Conditional Sale Indebtedness and the Conditional Sale Agreement, and including therein the Owner's consent to such assignment, as from time to time amended, modified or supplemented in accordance with its terms.

Basic Agreements: this Lease, the Participation Agreement, the Conditional Sale Agreement, the Assignment, the Lease Assignment, the Security Agreement and the Purchase Agreement Assignment.

Basic Rent: as defined in Section 3.1.

Business Day: any day other than a Saturday, a Sunday or any other day on which banking institutions in Connecticut, Virginia or New York are required or authorized by law to be closed.

Calculation Date: as defined in Section 7.1.

Casualty Occurrence: as defined in Section 7.1.

Casualty Value: as defined in Section 7.1.

Certificate of Acceptance: a certificate delivered, pursuant to Section 2 by a representative of the Owner who is an employee of the Lessee upon delivery by the Manufacturer and acceptance by the Lessee of units of the Additional Equipment, which certificate shall also serve to confirm that the conditions set forth in Section 3.1 of the Conditional Sale Agreement have been complied with to the satisfaction of the Owner and that the units of the Additional Equipment have been inspected and accepted on behalf of the Owner for all purposes of the Conditional Sale Agreement.

Certificate of Acceptance of Lining: a Certificate delivered, pursuant to Section 2 by a representative

of the Owner who is an employee of the Lessee upon satisfactory installation and acceptance by the Lessee of the lining in units of the Original and Additional Equipment.

Closing: the closing of the delivery of the Additional Equipment under the Conditional Sale Agreement and of the related transactions contemplated by Sections 2, 3 and 4 of the Participation Agreement.

Closing Date: the date of the Closing.

Code: as defined in section 6.3.

Conditional Sale Agreement: the Conditional Sale Agreement, dated as of the date hereof, between the Manufacturer and the Owner, providing for the sale of the Additional Equipment to the Owner by the Manufacturer, as from time to time amended, modified or supplemented in accordance with its terms.

Conditional Sale Indebtedness: as defined in Section 4.1 of the Conditional Sale Agreement.

Declaration of Default: as defined in Section 17 of the Conditional Sale Agreement.

Equipment: the Original Equipment and the Additional Equipment.

Event of Default: as defined in Section 16.

Improvements: as defined in Section 6.3.

Indemnified Persons: as defined in Section 6.1.

Indemnitees: as defined in Section 6.2.

Investment Credit: as defined in Section 6.3.

IteI: IteI Corporation, a Delaware corporation, acting through its Rail Division, and its successors and assigns.

Lease Assignment: the Assignment of Lease and Agreement, dated as of the date hereof, between the Owner and the Agent, granting to the Agent a security interest in and assigning all the Owner's right, title and interest in, to and under the Lease, as from time to time amended, modified or supplemented in accordance with its terms.

Lender: each of The Equitable Life Assurance Society of the United States and MLL Leasing Corp., as lender under the Participation Agreement, and its successors and assigns.

Lien: any mortgage, pledge, lien, charge, encumbrance, retention of title, security interest or claim.

Lithcote Agreement: as defined in the Purchase Agreement Assignment.

Loss: as defined in Section 6.3.

Majority in Interest of Lenders: Lenders having an interest in excess of 50% of the aggregate principal amount of the Conditional Sale Indebtedness at the time outstanding.

Manufacturer: Portec, Inc., a Delaware corporation, and its successors and assigns.

Net Return Notice: as defined in Section 6.3.

Original Agreements: the Purchase Agreement, dated as of June 25, 1979, among the Owner and Itel Corporation, Rail Division; the Participation Agreement, dated as of June 25, 1979, among the Owner, the Lessee and Unimin Corporation; the Original Lease; and the Guaranty Agreement, dated as of June 25, 1979, by Unimin Corporation.

Original Equipment: as defined in Recital A.

Original Lease: as defined in Recital A.

Owner's Tax Counsel: as defined in Section 6.3.

Part: any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

Participation Agreement: the Participation Agreement, dated as of the date hereof, among the Lessor, the Lessee, the Agent, Unimin Corporation, and the Lenders, and consented to by Itel, as from time to time amended, modified or supplemented in accordance with its terms.

Permitted Liens: Liens of taxes, assessments or governmental charges or levies, in each case not due and delinquent; inchoate mechanics', materialmen's, repairmen's or other similar Liens arising in the ordinary course of business and not delinquent; and any Lien created pursuant to or under the Security Documents.

Purchase Agreements: the Purchase Agreement as defined in the Participation Agreement and the Purchase Agreement, dated as of June 25, 1979, between the Owner and Itel.

Purchase Price: \$43,350.03.

Rent Payment Date: as defined in Section 3.

Safety Railway Agreement: as defined in the Purchase Agreement Assignment.

Security Agreement: the Security Agreement between the Owner and the Agent, dated as of the date hereof, granting to the Agent a security interest in all the Owner's right, title and interest in and to the Original Equipment, as from time to time amended, modified or supplemented in accordance with its terms.

Security Documents: the Conditional Sale Agreement, the Assignment, the Lease Assignment and the Security Agreement.

Specifications: as set forth in Schedule A to the Conditional Sale Agreement.

Taxes: as defined in Section 6.2.

Termination Date: as defined in Section 13.

Termination Value: as defined in Section 13.

Unit: a unit of the Equipment.

## SECTION 2. Lease and Delivery of Equipment.

2.1. Original Equipment. The Lessee hereby confirms that, prior to the Closing Date, the Units of Original Equipment were accepted and delivered pursuant to, and were subject to, the terms and conditions of the Original Lease,

and that, on the Closing Date, such Units shall become subject to the terms and conditions of this Lease without any further action by the parties.

This Lease shall extend to any and all additions, modifications or improvements to the Original Equipment which become the property of the Owner pursuant to this Lease and any and all replacements of the Original Equipment or any part thereof shall constitute accessions to the Original Equipment, shall be subject to all terms and conditions of this Lease, and shall be included in the term "Original Equipment" as used in this Lease.

2.2. Additional Equipment. The Owner agrees to lease to the Lessee on the terms and conditions set forth herein, each Unit of the Additional Equipment delivered to and accepted by the Owner at the Closing under the Conditional Sale Agreement. The Owner shall deliver or cause to be delivered each such Unit of the Additional Equipment to be subjected to this Lease at the place within the United States of America at which such Unit is delivered to the Owner under the Conditional Sale Agreement. Upon such delivery of a Unit of the Additional Equipment under the Conditional Sale Agreement, the Lessee will cause an authorized representative or representatives of the Lessee to inspect such Unit and, if such Unit is found to be in good order and in conformity with the Specifications and requirements referred to in Section 15.3 of the Conditional Sale Agreement, and marked in accordance with the provisions of Section 5 of this Lease, and if the conditions set forth in sub-paragraphs (a), (c) and (d) of Section 3.1 of the Conditional Sale Agreement have been complied with to the satisfaction of the Owner, to accept delivery of such Unit on behalf of the Lessee and to execute and deliver a Certificate of Acceptance with respect thereto, whereupon such Unit shall be deemed to have been delivered to and accepted by the Owner under the Conditional Sale Agreement and to have been delivered to and accepted by the Lessee under this Lease, and such Unit shall thereafter be subject to all of the terms and conditions of this Lease. Each such Unit not so delivered to and accepted by the Owner under the Conditional Sale Agreement and by the Lessee hereunder excluded from this Lease and shall be excluded from the terms "Unit", "Equipment" and "Additional Equipment" for all purposes of this Lease.

This Lease shall extend to any and all additions, modifications or improvements to the Additional Equipment which become the property of the Owner pursuant to this Lease and any and all replacements of the Additional Equipment or any part thereof shall constitute accessions to the Additional Equipment, shall be subject to all terms and conditions of this Lease, and shall be included in the term "Additional Equipment" as used in this Lease.

2.3 Lining of the Equipment. Any other provision of this Lease to the contrary notwithstanding, the Lessee agrees and warrants that it will not place any Unit into service until such Unit has been lined in accordance with the terms of the Safety Railway Agreement or the Lithcote Agreement, as appropriate, and the Lessee has certified to the Owner as to the satisfactory installation and acceptance by the Lessee of such lining by delivering a Certificate of Acceptance of Lining with respect to such Unit. Notwithstanding the inability of the Lessee to place any such Unit in service, the term of this Lease shall commence on the Closing Date as set forth in Section 4.

### SECTION 3. Rentals.

3.1 Basic Rent. The Lessee will pay to the Owner rental for each Unit in 216 consecutive equal monthly installments ("Basic Rent"), payable on the date of the calendar month next succeeding the calendar month in which the Closing Date occurs which corresponds to the date which was one day immediately prior to the Closing Date, and on the same date of each calendar month thereafter, or if any such month does not have a corresponding date, then the date of the last day of such month (each such date hereinafter referred to as a "Rent Payment Date"), each in an amount equal to \$356.28 per Unit.

3.2 Additional Rent. The Lessee will also pay, from time to time as provided in this Lease or on demand, as additional rent ("Additional Rent"), (a) all other amounts, liabilities and obligations which the Lessee herein assumes or agrees to pay, (b) interest (to the extent legally enforceable) at the rate of 12% per annum on such of the foregoing amounts, liabilities and obligations as are payable to the Owner and which are not paid in full when due or on the date of such demand, as the case may be, from such date until payment in full thereof, and (c) interest (to the

extent legally enforceable) at the rate of 12% per annum on all overdue installments of Basic Rent from the due date thereof until payment. In the event of any failure on the part of the Lessee to pay any Additional Rent, the Owner or any other person entitled to receive the same shall have all rights, powers and remedies provided for in this Lease or at law or in equity or otherwise in the case of non-payment of Basic Rent.

3.3 Place of Payment, etc. Subject to Section 22, each payment of Basic Rent or Additional Rent pursuant to Section 3.1 or 3.2 and any other amount payable under this Lease shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, in immediately available funds and by 11:00 a.m., New York time, on the date set forth for such payment in this Lease, at the office of the Owner (or to such other person as the Owner may from time to time direct in writing). If the date on which any such payment is to be made is not a Business Day, such payment shall be made on the next preceding Business Day.

3.4 Net Lease. This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein expressly provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner, the Manufacturer, the Agent or any other person, whether under this Lease or otherwise, including any rights of Lessee by subrogation hereunder or thereunder against the Owner or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of or defect of title to all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the taking or requisitioning of any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or

unenforceability or lack of due authorization of this Lease, any insolvency of or bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Owner or the Agent for any reason whatsoever.

#### SECTION 4. Term of Lease.

The term of this Lease as to each Unit of the Original Equipment commenced on July 5, 1979, and as to each Unit of Additional Equipment shall begin on the Closing Date and, subject to the provisions of Sections 7, 13 and 16.2, the term for all Units shall terminate 18 years thereafter, on the 216th Rent Payment Date. Except for obligations of the Lessee hereunder which are specifically stated to terminate at a fixed time, all obligations of the Lessee hereunder shall survive the expiration of the term of this Lease.

#### SECTION 5. Identification Marks.

The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A or B hereto, as the case may be, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, or cause to be kept or maintained plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following legend: "Ownership Subject to a Security Interest



filed with the Interstate Commerce Commission", or other appropriate words designated by the Agent (the Owner if the security interest in favor of the Agent under the Security Documents shall have been discharged of record), with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested by the Agent in order to protect the Owner's title to and property in, and the Agent's security interest in, such Unit and the rights of the Owner under this Lease and of the Agent under the Security Documents. The Lessee will not place any such Unit in service if such legend is not so marked on both sides thereof and will replace promptly any such legend which may be removed, obliterated, defaced or destroyed. The Lessee will not change or permit to be changed the identifying number of any Unit unless and until (a) a statement of the new number or numbers to be substituted therefor shall have been filed with the Owner and the Agent and duly filed, recorded and deposited by the Lessee in all public offices where this Lease or the Security Documents shall have been filed, recorded and deposited and (b) the Lessee shall have furnished the Owner and the Agent an opinion of counsel to the effect that (i) such statement has been so filed, recorded and deposited, (ii) such filing, recordation and deposit is sufficient to protect the Owner's and the Agent's respective interests in such Units and (iii) no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary or advisable to protect the respective interests of the Owner and the Agent in such Units.

The Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership, except as above provided and except that the Lessee may permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by the Lessee, so long as this Lease shall remain in effect, on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

## SECTION 6. Indemnities.

6.1. General Indemnity. The Lessee shall pay or cause to be paid, and shall protect, indemnify and hold

the Owner and, as third party beneficiaries hereof, the Agent and each Lender and their respective successors, assigns, agents and servants (hereinafter called "Indemnified Persons") harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person, including any or all liabilities, obligations, damages, costs, interests, penalties, disbursements, expenses (including without limitation reasonable attorneys' fees and expenses of any Indemnified Person relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Equipment, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, sublease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort or imposed by statute; (v) any injury to or the death of any person or any damage to or loss of property on or near any Unit or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Equipment or of any other equipment in connection with the Equipment (whether owned or under the control of the Owner, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation (except by the Indemnified Person seeking indemnity hereunder), of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, subleasing, ownership, use, replacement, adaptation or maintenance thereof; (vii) any claim arising out of any of the obligations of the Owner under the Participation Agreement, except to the extent such claim arises from a negligent act or negligent omission or willful wrongdoing of the Owner; (viii) any claim arising out of the exercise of the rights of the Agent under the Security Documents, including, without limitation, all costs and expenses of the Lenders incurred by them pursuant to Section 11.2 of the Participation Agreement in connection with the Lenders' indemnification of the Agent, and advances made by the Lenders to the Agent, with respect to action taken by the Agent under the

Participation Agreement, the Security Documents or this Lease; or (x) any claim against the Owner, the Agent or any Lender for any service, selling, purchase or finder's fee or commission (with the exception of any claims against the Owner in respect of costs and expenses which the Owner has specifically agreed to pay pursuant to clauses (i) and (ii) of Section 13 of the Participation Agreement) in connection with any Unit. The Lessee shall not be required to indemnify any party indemnified hereunder in respect of such party's willful misconduct or gross negligence. All payments hereunder shall be made directly to the Indemnified Person. The Lessee shall be obligated under this Section 6.1, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this Section 6.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's reasonable request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this Section 6.1, the Lessee shall pay or cause to be paid to such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner each agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of, or the making of provision satisfactory to the Indemnified Person for the full payment

of, any indemnities as contained in this Section 6.1 by the Lessee, and provided that no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, then the Lessee shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given and any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this Section 6.1 shall be paid over to the Lessee for indemnification payments previously made in respect of such matter.

The Lessee further agrees to indemnify, protect and hold harmless the Indemnified Persons from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against any of them because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee or Itel and not manufactured by the Manufacturer (including the lining) or of any design, system, process, formula or combination specified by the Lessee or Itel and not developed or purported to be developed by the Manufacturer which infringes or is claimed to infringe on any patent or other right.

The indemnities contained in this Section 6.1 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and is expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Section 6.1 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Owner therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

6.2. General Tax Indemnity. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay or cause to be paid, and on written demand to indemnify and hold the Owner, the Agent and the Lenders (collectively, the "Indemnitees") harmless from all fees (including, without limitation, documenta-

tion, license and registration fees), taxes (including, without limitation, income, gross receipts, franchise, sales, use, property [real or personal, tangible or intangible], stamp and minimum [imposed under Section 56 of the Internal Revenue Code of 1954, as amended] taxes), assessments, fees, levies, imposts, duties, charges or withholdings of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner, the Agent, the Lenders, the Lessee, the Equipment or any Unit, or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes") upon or with respect to: (a) any Unit or any part thereof; (b) the manufacture, purchase, acceptance, rejection, ownership, delivery, non-delivery, transport, maintenance, repair, sale, leasing, possession, use, operation, transfer of title, return, abandonment or other disposition thereof; (c) the rentals, receipts or earnings arising therefrom; (d) any of the Original Agreements or the Basic Agreements; (e) any payment made pursuant to any such agreement; (f) the property, income or other proceeds received by the Agent under the Security Documents; (g) the creation of the Conditional Sale Indebtedness; or (h) otherwise in connection with any of the transactions contemplated by any such agreement, excluding, however (i) franchise taxes, capital stock taxes or Taxes imposed on or measured solely by the net income or excess profits of the Owner which are payable to the United States or to the state or political subdivision thereof in which the Owner has its principal place of business or is incorporated or to any other state or political subdivision thereof where the Owner is subject to taxation as the result of transactions unrelated to the transactions contemplated in the Participation Agreement, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease the payment of which is specifically provided for elsewhere in this Lease, (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by or on behalf of the Owner or any transfer or disposition by or on behalf of the Owner resulting from bankruptcy or other proceedings for the relief of creditors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease, without the consent of the Lessee, unless, in each case,

such transfer or disposition is in connection with a Casualty Occurrence or an Event of Default shall have occurred and be continuing, (iii) any Taxes imposed on or measured by the gross or net income of any Lender, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease the payment of which Taxes is specifically provided for elsewhere in this Lease and any Taxes imposed on or for the account of any Lender in connection with any transfer of its interest in the Conditional Sale Indebtedness,

(iv) any Taxes imposed on or measured by any fees received by the Agent for its services under the Security Documents or the Participation Agreement and (v) any Taxes imposed on or for the account of the Owner by any foreign government or any subdivision or taxing authority thereof which are currently utilized by the Owner, in accordance with the terms of the last sentence of this paragraph, as a credit against the United States income tax otherwise payable by the Owner, provided that the Lessee shall not be required to pay any Taxes during the period it may be contesting or causing to be contested the same in the manner provided in this Section 6.2. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or the affiliated group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Lessee is a member) under the laws of the United States or of any state or local government or governmental subdivision thereof, or of any foreign country or subdivision or authority thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit, provided that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in good faith by appropriate proceedings. For purposes of this paragraph, in determining the order in which the Owner utilizes withholding or other foreign taxes as a credit against the Owner's United States income taxes, the Owner shall be deemed to utilize (i) first, all foreign taxes other than those described in clause (ii) below; provided, however, that such other foreign taxes which are carried back to the taxable year for which a determination is being made pursuant to this sentence shall be deemed utilized after the foreign taxes described in clause (ii) below, and (ii) then, on a pro rata basis, all foreign taxes (including Taxes hereunder) with respect to which the Owner is entitled to obtain indemnification pursuant to an indemnification provision contained in any lease or any participation or other agreement relating to a lease (including this Lease).

The amount which the Lessee shall be required to pay with respect to any Taxes indemnified against pursuant to this Section 6.2 shall be an amount sufficient to restore the Indemnatee to the same after-tax position such Indemnatee would have been in had such Taxes not been imposed.

If a claim is made against any Indemnatee for any Taxes indemnified against under this Section 6.2, such Indemnatee shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, such Indemnatee shall, upon receipt of indemnity satisfactory to it for all costs, expenses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes. Such Indemnatee shall, in its sole discretion, select the forum for such contest and determine whether any such contest of the validity, applicability or amount of such Taxes shall be by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, or cause to be contested, at its own expense, the validity, applicability or amount of such Taxes in the name of such Indemnatee, provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of such Indemnatee in any such proceeding or action) without the prior written consent of such indemnified party, which consent shall not be unreasonably withheld. If such Indemnatee shall determine that any such contest shall be by paying such Taxes and seeking a refund thereof, the Lessee shall pay to such Indemnatee the amount of such Taxes paid by such Indemnatee. If such Indemnatee shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by the Lessee and the period of such payment, such Indemnatee shall pay to the Lessee the amount of such refund or interest net of expenses, but only if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Lessee under this Section 6.2 or arising out of this Section 6.2, the Lessee shall make or cause to be made such report or return, or, except in the case of obligations resulting from the second sentence of the first paragraph of this

Section 6.2, shall promptly notify or cause to be notified the appropriate Indemnatee of such requirement and if requested in writing by such Indemnatee shall make or cause to be made such report or return in such manner as shall be satisfactory to the appropriate Indemnatee. All costs and expenses (including reasonable legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

Payments due from the Lessee under this Section 6.2 shall be made directly to the Indemnatee, except to the extent paid to a governmental agency or taxing authority.

The Lessee shall furnish or cause to be furnished promptly, upon request, such information and data as are normally available to the Lessee and which the Owner reasonably may require to permit compliance with the requirements of any taxing authorities.

6.3. Special Federal Income Tax Indemnity. (a) Assumptions. This Lease has been entered into on the basis that an opinion to the effect described in Section 4.5 of the Participation Agreement will be provided to the Owner; that the Owner, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the "Code"), to an owner of property, including, without limitation, (w) deductions for depreciation of each Unit under section 167 of the Code commencing in the year that such Unit is delivered to the Owner under the Conditional Sale Agreement or the Purchase Agreements, as the case may be, computed on the basis (i) that each Unit will have a basis under section 167(g) of the Code at least equivalent to the Purchase Price of such Unit, (ii) initially of the declining balance method, using a rate equal to 200% of the straight line rate, switching to the sum of the years-digits method authorized by sections 167(b)(2) and (3) of the Code (except in the case of the seven Units described on Schedule E hereto (hereinafter called the "Used Units"), in which case initially of the declining balance method, using a rate equal to 150% of the straight line rate, switching to the straight line method), (iii) of the asset depreciation range and class life system permitted by section 167(m) of the Code and § 1.167 (a)-11 of the Regulations, (iv) of an asset depreciation period of 12 years, (v) that the salvage value of each Unit below which each such Unit may not be depreciated is zero, after the deduction permitted by section 167(f) of the Code, and (vi) that for purposes of computing the depreciation deductions with respect to the



Equipment for the calendar year 1979, the Owner will be entitled to elect and will elect the half-year convention (hereinafter called the "ADR Deductions"), (x) an investment credit pursuant to section 38 of the Code in the year that each Unit is delivered to the Owner under the Conditional Sale Agreement or the Purchase Agreements, as the case may be, equivalent to 10% of the Purchase Price of such Unit (hereinafter called the "Investment Credit") (except that no Investment Credit shall be available with respect to the Used Units), (y) deductions with respect to interest on the Conditional Sale Indebtedness when paid or accrued, in accordance with the method of accounting on the basis of which the Owner regularly computes its income provided such basis is authorized by and fully conforms to the provisions of section 163 of the Code (hereinafter called the "Interest Deductions"), (z) that for Federal income tax purposes all amounts includable in the gross income of the Owner with respect to the Equipment and all deductions allowable to the Owner with respect to the Equipment will be treated as derived from, or allocable to, sources within the United States. The Lessee expects that the only use, if any, of each Unit of Equipment outside the United States is use in Canada or Mexico on a temporary basis which is not expected to exceed a total of 90 days in any year.

(b) Lessee's Representation. The Lessee represents and warrants that (i) all of the Units (except the Used Units) constitute property the entire Purchase Price of which will qualify for the investment credit under section 38 of the Code; (ii) at the time the Units are (or were) delivered to the Owner under the Conditional Sale Agreement or the Purchase Agreements, as the case may be, the Units (except the Used Units) will constitute (or constituted) "new section 38 property" within the meaning of section 48(b) of the Code and at the time the Units are (or were) delivered to the Owner under the Conditional Sale Agreement or the Purchase Agreements, as the case may be, the Units (except the Used Units) will not have been (or had not been) used or placed in service by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Owner; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code; (iv) at all times during the term of this Lease, the Owner will be entitled to treat, for Federal income tax purposes, all expenses, losses and other deductions relating to the Units (including the ADR Deductions and the Interest Deductions), to the extent such expenses, losses and other deductions are allowable to it, as being derived from, or allocable to, sources within the United States; and (v) the Lessee will use its best efforts to maintain or cause

to be maintained sufficient records to verify for each year the period of time in such year during which each Unit is physically located within the United States and the period of time, if any, in such year during which each Unit is physically located outside of the United States and will supply or cause to be supplied such records to the Owner within 90 days after receipt of a written demand therefor.

The Lessee understands that the Owner intends (1) to claim on its Federal income tax returns the Investment Credit, the ADR Deductions and the Interest Deductions and (2) to treat on its Federal income tax returns the income and deductions with respect to the Equipment as derived from, or allocable to, sources within the United States.

(c) Payment of Indemnity. If for any taxable year of the Owner, for Federal income tax purposes, as a result of (i) any inaccuracy in fact or in law of any representation or warranty contained in Section 6.3(b) or (ii) any actions or omissions by the Lessee, other than an action or omission contemplated by the Basic Agreements, (x) the Owner shall not be entitled to, or shall suffer a disallowance or recapture of or shall lose the benefit of all or any portion of the Investment Credit, the ADR Deductions or the Interest Deductions or (y) any item of income or deduction with respect to the Equipment shall not be treated as derived from, or allocable to, sources within the United States (any such event described in clause (x) or (y) of this paragraph being hereinafter called a "Loss"), then the Lessee after receiving written notice from the Owner of such Loss together with a certificate of an officer of the Owner setting forth in reasonable detail the computations and methods used in calculating such Loss and the amount or amounts of the payments required to be made pursuant to this paragraph (such notice and certificate being hereinafter collectively called the "Net Return Notice"), shall within 30 days of receipt of the Net Return Notice, but not prior to payment by the Owner of the tax which becomes due as a result of such Loss, pay to the Owner in a lump sum the amount required to provide the Owner with its contemplated after tax rate of return and after tax cash flow for such year. To the extent any Loss results in a benefit to the Owner which has not been taken into account in determining the lump sum payment, payment will be made to the Lessee by the Owner at the time such benefit is realized, together with the amount of any additional tax benefits realized by the Owner as a result of any payment made pursuant to this sentence, provided, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would

exceed (A) the amount of all prior payments by the Lessee to the Owner pursuant to this Section 6.3(c) in respect of a Loss less (B) the amount of all prior payments by the Owner to the Lessee pursuant to this Section 6.3(c), and the amount by which such payment would exceed such amounts shall reduce pro tanto any subsequent obligation of the Lessee to make any payments to the Owner pursuant to this Section 6.3(c). The adjustments required to be made pursuant to this Section 6.3(c) shall be made by the Owner and shall be computed using the same method and the same assumptions as were utilized by the Owner in originally evaluating the transaction except for the assumption that has resulted in such adjustment. As requested by the Lessee, the accuracy and consistency of such computation shall be verified at the Lessee's expense by an independent third party selected by the Lessee and reasonably satisfactory to the Owner.

Any late payment by any party hereto of any of its obligations under this Section 6.3(c) shall result in the obligation on the part of such party promptly to pay an amount equal to interest at the rate per annum equal to 12% per annum on the overdue payment.

(d) Exclusions. Notwithstanding anything to the contrary set forth hereinabove, no amount shall be payable as an indemnity hereunder in respect of any Loss to the extent such Loss is the result of any of the following:

(i) a voluntary transfer or voluntary disposition (whether prior to, during or after the term of this Lease, but not including a transfer or disposition as a result of a Casualty Occurrence) of any Units or of the interest of the Owner in any Units or the rentals under this Lease, or any transfer or disposition of any Units or of the interest of the Owner in any Units or the rentals under this Lease, whether voluntary or involuntary, which results from bankruptcy or other proceedings for the relief of debtors in which the Owner is the debtor, unless, in each case, such transfer or disposition is made (A) as a direct result of an Event of Default, as defined in Section 16 of this Lease, which has occurred and is continuing; or (B) in connection with any alteration, modification or addition to any Unit by the Lessee;

(ii) the failure of the Owner to claim in a timely and proper manner the Investment Credit, the ADR Deductions (including making all appropriate elections under the applicable Income Tax Regulations), the Interest Deductions or any foreign tax credit or to make

a timely and proper election, if permitted by the Code, to treat income and deductions with respect to the Equipment as derived from, or allocable to, sources within the United States, unless independent counsel selected by the Owner and approved by the Lessee, such approval not to be unreasonably withheld, shall determine that there is no reasonable basis to make such claim;

(iii) the failure of the Owner to have sufficient liability for Federal income tax against which to credit the Investment Credit or foreign tax credit or sufficient income to benefit from the ADR Deductions or the Interest Deductions;

(iv) any residual sharing, guarantee agreement or other voluntary act of the Owner (either individually or in concert with others);

(v) any event giving rise to the payment of Casualty Value, or an amount determined by reference thereto, if the Owner shall have received all amounts required to be paid in respect of such event under this Lease;

(vi) the failure of the Owner to contest any potential Loss in accordance with the provisions of Section 6.3(e) or (g);

(vii) the status of the Owner or any successor or transferee of the Owner as an entity described in Section 48(a)(4) or (5) of the Code or as an entity which cannot fully benefit from, or which does not qualify for, the Investment Credit, the ADR Deductions or the Interest Deductions; or

(viii) any change in Federal tax statutes, regulations or rulings on or after the date hereof.

(e) Contests. The Owner will not settle or compromise any proposed adjustment that might result in a Loss without the prior written consent of the Lessee. If at the conclusion of an audit the Owner receives a preliminary or "30-day-letter" from the Internal Revenue Service proposing an adjustment in any item claimed in accordance with Section 6.3(b) on a tax return or refund claim of the Owner, the Owner shall promptly notify the Lessee of the proposed adjustment and, upon receipt within 20 days after the Lessee's receipt of such notice of a written request to do so from the Lessee, the Owner shall promptly request from the independent tax counsel selected by the Owner and approved by the Lessee, which approval shall not be unreasonably withheld (hereinafter called the "Owner's Tax Counsel"), its opinion

whether there is a reasonable possibility of a favorable determination in the event such proposed adjustment is contested. If the opinion is to the effect that there is such a reasonable possibility, the Owner shall contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Owner in its discretion, or as may be required in order to permit the Owner to contest such adjustment in any court. Upon the conclusion of such administrative proceedings, if any, the Owner shall promptly notify the Lessee of the final adjustment proposed by the Internal Revenue Service and, upon receipt within 30 days thereafter of a written request to do so from the Lessee, the Owner shall promptly request the Owner's Tax Counsel for its opinion whether there is a reasonable possibility of a favorable determination in the event such final adjustment is contested. If the opinion is to the effect that there is such a reasonable possibility, the Owner shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests the Owner to appeal the decision of such a court or of an intermediate appellate court, the Owner shall promptly request the Owner's Tax Counsel for its opinion whether there is a reasonable possibility of a favorable determination in the event such decision is appealed. If the opinion is to the effect that there is such a reasonable possibility, the Owner shall appeal such decision. The Owner, in its discretion, shall determine the initial and any appellate court and, if the adjustment relates to an item claimed on a tax return, shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency, in each case after consultation with any tax counsel selected by the Lessee. For purposes of the foregoing provisions and without in any way limiting the discretion of Owner's Tax Counsel or Owner, no opinion of Owner's Tax Counsel shall be rendered until Owner's Tax Counsel shall have consulted with any tax counsel selected by the Lessee. The Lessee agrees to pay the Owner on demand all out-of-pocket costs and expenses, including without limitation attorneys' fees and expenses but excluding overhead costs of the Owner and fees of the Owner's internal counsel, incurred by the Owner in connection with taking such action. In the event that the Owner pays the tax resulting from a proposed adjustment and proceeds to seek a refund thereof, the Lessee shall not be required to make any payment pursuant to Section 6.3(c) or 6.3(g) until the completion of any proceedings pursuant to this Section 6.3(e), but in such event the Lessee agrees to pay the Owner an amount equal to interest at the rate per annum currently charged by the

Internal Revenue Service on deficiencies on the amount of tax in question from the date of payment of such tax to the date of final determination of such adjustment, such amount to be payable in equal installments within each calendar year on the date on which rental for such period is payable under this Lease. Upon receipt by the Owner of a refund of any tax paid by it in respect of which the Lessee had paid an amount equal to the interest at the rate provided in the preceding sentence while such tax payment was contested by the Owner, an amount equal to the aggregate amount of such interest shall be paid by the Owner to the Lessee forthwith. Upon completion of the actions set forth in this paragraph, the Lessee's liability with respect to its required indemnity under this Section 6.3 shall become fixed and determinable.

(f) Owner as Part of Affiliated Group. For purposes of this Section 6.3, the term "Owner" shall include any affiliated group, within the meaning of section 1504 of the Code, of which the Owner is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(g) Improvements. If at any time prior to the disposition of a Unit in a taxable transaction, the Owner is required to include in its gross income an amount in respect of any improvement or addition to such Unit made by the Lessee (such improvements, modifications or additions being hereinafter called "Improvements"), then the Lessee shall pay to the Owner, as an indemnity, such amount or amounts which, after deduction of all fees, taxes and other charges required to be paid by the Owner in respect of the receipt of such amounts, shall be equal to the sum of the additional Federal, state and local income taxes payable by the Owner from time to time as a result of such Improvements plus the amount of any interest, penalties or additions to tax payable as a result of any such Improvements (less any Federal, state or local tax benefits resulting to the Owner from payment by the Owner of any amounts reimbursed hereunder). If as a result of any such Improvements the aggregate Federal, state and local income taxes paid by the Owner for any taxable year shall be less than the amount of such taxes which would have been payable by the Owner had no such Improvements been made, then the Owner shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Owner as a result of any payment made pursuant to this sentence, provided that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to this Section 6.3(g) in respect of any Improvements less (y) the amount of all prior payments by the Owner to the Lessee pursuant to this Section

6.3(g), and the amount by which such payment would exceed such amount shall reduce pro tanto any subsequent obligation of the Lessee to make any payments to the Owner pursuant to the first sentence of this paragraph. For purposes of computing any amounts payable to the Owner and any amounts payable to the Lessee pursuant to this Section 6.3(g) the statutory rate of Federal, state or local income tax, as the case may be, shall be used. The amount payable to the Owner pursuant to this Section 6.3(g) shall be paid within 30 days after receipt of the written demand therefor from the Owner (but not prior to payment by the Owner of the additional taxes which become due as a result of the said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable. As requested by the Lessee, the accuracy and consistency of such computation shall be verified at the Lessee's expense by an independent third party selected by the Lessee and reasonably satisfactory to the Owner. The Owner agrees to contest the inclusion in its income of any amount with respect to Improvements by any taxing authority to the extent and under the circumstances set forth in Section 6.3(e) as if such inclusion were a Loss. Any payment due to the Lessee from the Owner pursuant to this Section 6.3(g) shall be paid within 30 days after the Owner realizes any such savings in its income taxes.

(h) Casualty and Termination Value Adjustments.

In the event that any indemnity payments are required to be made by the Lessee pursuant to this Section 6.3, the damages and amounts set forth in Section 16 of this Lease and the applicable Casualty Value and Termination Value percentages set forth in Schedules C and D, respectively, to this Lease shall be appropriately adjusted by the Owner, subject to the restrictions contained in the definitions of "Casualty Value" and "Termination Value" in this Lease and subject to the restriction that such applicable Casualty Value and Termination Value percentages shall at all times be sufficient to satisfy the obligations of the Owner under the Conditional Sale Agreement, including its obligations with respect to the payment of Conditional Sale Indebtedness, notwithstanding any limitation of liability contained therein. The adjustments required to be made pursuant to this Section 6.3(h) shall be made by the Owner and shall be computed using the same method and the same assumptions, including, without limitation, tax rates, as were utilized by the Owner in originally evaluating this transaction except for the assumption that has resulted in such adjustment. Prior to making any such adjustment, the Owner shall provide the Lessee and the Agent with a certificate of an officer of the Owner setting forth in reasonable detail the figures and methods used in making such calculations and certifying as to compliance with the restrictions and conditions referred to in the two preceding sentences. As

requested by the Lessee, the accuracy and consistency of such computation shall be verified at the Lessee's expense by an independent third party selected by the Lessee and reasonably satisfactory to the Owner. In the case of any such adjustments in the damages and amounts set forth in Section 16 of this Lease and the applicable Casualty Value and Termination Value percentages set forth in Schedules C and D, respectively, to this Lease, if any payment of such damages, amounts, Casualty Values or Termination Values shall have been made prior to the adjustments made pursuant to this paragraph, (a) the Lessee shall pay to the Owner the excess amount which would have been payable on the due date of such payment by reason of the adjustments pursuant to this Section 6.3(h) or (b) the Owner shall pay to the Lessee the amount of such payments in excess of the amount of such payments which would have been payable by reason of the adjustments pursuant to this Section 6.3(h). In addition, if the Owner shall incur a Loss after the Lessee shall have paid an amount equal to or determined by reference to Casualty Value or Termination Value, then the Owner shall not be entitled to a payment pursuant to this Section 6.3 to the extent that the Owner shall have been made whole against such Loss by reason of such payment of an amount equal to or determined by reference to Casualty Value or Termination Value.

6.4. Survival; No Guaranty. The Lessee's and the Owner's agreements to pay any sums which may become payable pursuant to Section 6.1, 6.2 or 6.3 shall survive the expiration or other termination of this Lease. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of any payment or other obligation under the Conditional Sale Agreement or of any value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

## SECTION 7. Payment for Casualty Occurrences; Insurance.

7.1. Casualty Occurrences. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government for a period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called "Casualty Occurrences"), during the term of this Lease, or until such Unit shall have been returned in the manner provided in Section 15 or 17 hereof, the Lessee shall promptly and fully notify or cause to be notified (after the Lessee has knowledge of such Casualty Occurrence) the Owner and the Agent with respect thereto. On



the Rent Payment Date (not earlier than the first regular monthly Rent Payment Date) next succeeding the delivery of such notice (or, in the event such Rent Payment Date shall occur within 15 days after delivery of notice, on the following Rent Payment Date, or, in the event the term of this Lease has already expired or will expire within 15 days after delivery of such notice, on a date within 15 days of such delivery), the Lessee shall pay or cause to be paid to the Owner an amount equal to the rental payment or payments in respect of such Unit due and payable on or prior to such date plus a sum equal to the Casualty Value of such Unit as of such date (such Rent Payment Date being hereinafter called the "Calculation Date"). Upon the making of such payment by or on behalf of the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner shall be entitled to recover possession of such Unit.

If the date upon which the making or causing to be made of such payment by the Lessee in respect of any Unit as required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit, shall pay or cause to be paid interest thereon from the end of such term to the date of such payment at the rate of 11% per annum.

The Owner hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner and no Event of Default hereunder, or event which with notice or lapse of time or both would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to retain the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Owner. If any such Event of Default or event has occurred and is continuing, the Lessee shall promptly pay all such proceeds to the Owner.

The "Casualty Value" of each Unit as of the Calculation Date for each such Unit shall be that percentage

of the Purchase Price of each Unit as is set forth in Schedule C hereto opposite such date. The aforesaid percentages have been computed without regard to recapture of the Investment Credit (as defined in Section 6.3(a)). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence during the period preceding the third, fifth or seventh anniversary of the date of delivery and acceptance of such Unit shall be increased in accordance with the last paragraph of Schedule C and such additional amounts, if any, shall be included within the meaning of the term "Casualty Value" as used herein.

In the event of the requisition for use of any Unit during the term of this Lease or any renewal thereof, unless such requisition shall constitute a Casualty Occurrence, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Owner pursuant to Section 15 or 17 hereof, as the case may be, promptly upon such return rather than at the end of the term of this Lease; but the Lessee shall in all other respects comply with the provisions of said Section 15 or 17, as the case may be, with respect to such Unit. All payments received by the Owner or the Lessee from the requisitioning authority for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing; and all payments received by the Owner or the Lessee from the requisitioning authority for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Owner.

Except as provided in this Section 7.1, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.2. Insurance. The Lessee agrees that it will at all times during the term of this Lease and at its own cost and expense keep each Unit insured against loss by fire, windstorm and explosion and with extended coverage and against such other risks as are customarily insured against by companies owning property of a similar

character and engaged in a business similar to that engaged in by the Lessee at not less than \$60,000 per Unit and \$1,000,000 per occurrence, and will maintain general public liability insurance with respect to the Equipment against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than \$1,950,000 per occurrence and \$1,950,000 in the aggregate in any one year. Any such insurance may have applicable thereto deductible provisions to no greater extent than in effect for insurance coverage for equipment similar to the Equipment owned by the Lessee and in no event greater than \$25,000 per occurrence, in the case of public liability insurance, and \$5,000 per occurrence, in the case of property and casualty insurance on the Units, and may be carried under blanket policies maintained by the Lessee so long as such policies otherwise comply with the provisions of this Section 7.2. All such property and casualty insurance shall designate the Owner, the Lessee and the Agent as additional named insureds with respect to the Units, and shall provide that all proceeds shall be adjusted with the Lessee and the Owner jointly, and shall be payable to the Agent (or, after receipt of notice from the Agent stating that the Conditional Sale Indebtedness has been discharged to the Owner). All such liability insurance shall designate the Owner, the Lessee, the Agent and the Lenders as additional insureds. All such policies shall provide (a) that the insurer thereunder waives all rights of subrogation against the Owner, the Lessee, the Agent and, if applicable, the Lenders, (b) that 30 days' prior written notice of cancellation or material change or non-renewal shall be given to the Agent and the Owner, and (c) that such insurance as to the interests of the Agent or the Lenders therein shall not be invalidated by any act or neglect of the Owner or the Lessee or by any foreclosure or other remedial proceedings or notices thereof relating to the Equipment or any interest therein nor by any change in the title or ownership of the Equipment or any interest therein or with respect thereto, or by the use or operation of the Equipment for purposes more hazardous or in a manner more hazardous than is permitted by such policy. All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as provided in this Lease. The Lessee shall furnish the Owner with certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates

evidencing such renewal prior to the expiration date of the original policy or policies. All insurance provided for in this Section 7.2 shall be effected with insurance companies approved by the Owner, which approval shall not be unreasonably withheld.

The proceeds of any insurance received by the Owner or the Agent on account of or for any loss or casualty in respect of any Unit shall be released to the Lessee either (x) upon a written application signed by the President, any Vice President or the Treasurer of the Lessee for the payment of, or to reimburse the Lessee for the payment of, the cost of repairing or restoring the Unit which has been damaged (which application shall be accompanied by satisfactory evidence of such cost and of the completion of such repair or restoration), or (y) if this Lease is terminated with respect to such Unit promptly upon payment by the Lessee of the Casualty Value to the Owner; provided that, if the Lessee is at the time of the application in default in the payment of any other liability of the Lessee to the Owner, the Agent or any Lender hereunder, such proceeds shall be applied against such liability.

#### SECTION 8. Reports; Inspection.

On or before March 31 in each year, commencing with the calendar year 1980, the Lessee will furnish or cause to be furnished to the Owner, the Agent and each Lender an accurate statement (a) setting forth as at the preceding December 31 the amount, description and number of all Units then leased hereunder, the amount, description and number of all Units that have suffered a Casualty Occurrence during the preceding calendar year or, in the case of the first such statement, since the date of this Lease (specifying the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner or the Agent may reasonably request, and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by Section 5 have been preserved or replaced.

The Owner and the Agent shall have the right (but not the duty) by their respective agents to inspect the Units and the Lessee's and its agent's records with respect thereto at such reasonable times as the Owner or the Agent may request during the continuance of this Lease.

The Lessee agrees at its expense to prepare and deliver or cause to be prepared and delivered to the Owner or the Agent within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Owner or the Agent) any and all reports (other than income tax returns) to be filed by the Owner or the Agent with any Federal, state or other regulatory authority by reason of the ownership by the Owner of the Units, the security interest of the Agent therein or the leasing thereof to the Lessee.

SECTION 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Alterations.

9.1. Disclaimer of Warranties. NEITHER THE OWNER NOR THE AGENT MAKES, HAS MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE OWNER NOR THE AGENT MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between the Owner and the Agent, on the one hand, and the Lessee on the other, are to be borne by the Lessee; but the Owner hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Owner and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner may have against the Manufacturer (as defined in the Participation Agreement), Safety Railway Services Corporation, Mobil Oil Corp., Lithcote Company, PPG Industries, Inc. or ITEL. The Owner and the Agent shall have no responsibility or liability to the Lessee or

any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Unit or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Unit or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Unit. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Owner that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Owner or the Agent based on any of the foregoing matters.

9.2. Compliance with Laws and Rules. The Lessee agrees, for the benefit of the Owner and the Agent, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all the laws of the jurisdiction in which its operations involving any Unit may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will fully conform therewith at no expense to the Owner, provided that the Lessee may upon written notice to the Owner, in good faith, contest or cause to be contested the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Owner, adversely affect the property or rights of the Owner under this Lease.

9.3. Maintenance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any Additions thereto) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted. The term "ordinary wear and tear" for purposes of this Agreement shall mean that wear and tear which would have been suffered by units of the same type which had carried at all times, and over

the same period of time, commodities of the kind ordinarily carried in the Units by the Lessee. The Lessee shall also cause the lining in each hopper of each Unit to be repaired or replaced so that at no time shall the base metal be exposed at any point on the cover or at any point more than two-thirds of the way up the inside surface of such hopper.

9.4. Alterations, etc. The Lessee and its affiliates, at their own cost and expense, may from time to time make such alterations, modifications and additions (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the United States Department of Transportation or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (hereinafter collectively called "Additions") to the Units as the Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Units, and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease, provided that no such Addition shall be made if, in the case of an alteration or modification, the Unit cannot be readily restored to its original condition immediately prior to the time such alteration or modification was made or, in the case of an addition, the addition is not readily removable from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which the Unit would have had immediately prior to such time had such addition not been made, assuming the Unit was then in the condition required to be maintained by the terms of this Lease.

Title to all Parts incorporated in or installed as part of the Units shall without further act vest in the Owner in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such replacement Part, (ii) such Part is required to be incorporated in or installed as part of the Units pursuant

to the terms of Section 9.2 or Section 9.3 or (iii) notwithstanding the provisions of this Section 9.4, such Part cannot be readily removed from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in the Lessee.

#### SECTION 10. Prohibited Liens.

The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a Lien upon or with respect to any Unit or the interest of the Owner, the Agent or the Lessee therein, other than Permitted Liens, and will promptly discharge any such claim or Lien which arises, but shall not be required to pay or discharge any such claim or Lien so long as (i) the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner, (ii) prompt notice of such contest is given to the Owner and the Agent and (iii) the nonpayment or non-discharge of such claim or Lien does not, in the reasonable opinion of the Agent or the Owner, materially adversely affect the interest of the Agent or the Owner in or to the Equipment, the Agent's interest in the income and proceeds from the Equipment, or any other rights of the Agent or the Owner under this Lease, the Lease Assignment, the Conditional Sale Agreement, the Assignment or the Security Agreement.

#### SECTION 11. Possession and Use; Assignments and Subleases.

So long as no Event of Default shall have occurred and be continuing, the Lessee shall be entitled to the possession of the Units in accordance with the terms of this Lease. Except as permitted by this Section 11, the Lessee shall not assign or transfer its rights hereunder or sublease or part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units.



This Lease does not prohibit the use of the Equipment by others in the usual interchange of traffic, but the Lessee will not permit any Unit to be assigned to service, or to be regularly operated and maintained, outside the United States of America. The Lessee will not, without the prior written consent of the Owner and the Agent, assign this Lease or any of its rights hereunder or sublease any Unit. In the case of a sublease after the discharge of record of the Conditional Sale Indebtedness, the Owner shall not unreasonably withhold its consent. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder, all of which shall be and remain those of a principal and not a surety.

#### SECTION 12. Merger, Consolidation, etc.

The Lessee may assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any solvent corporation into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, in compliance with the requirements of Section 14.3 of the Participation Agreement.

#### SECTION 13. Early Termination.

Upon not less than 180 days' prior written notice to the Owner and so long as no Event of Default has occurred and is continuing, the Lessee may, at its sole option and for any reason whatsoever, terminate this Lease on the 120th Rent Payment Date or on any Rent Payment Date thereafter as to all (but not less than all) of the Equipment (the date specified in any such notice being herein called the "Termination Date"). Upon payment to the Owner on the Termination Date of the sum of (i) the installment of Basic Rent due on such date for all Units then subject to this Lease, (ii) all Additional Rent and other sums due hereunder on or prior to the Termination Date but unpaid, and (iii) an amount equal to the Termination Value of all such Units as of the Termination Date, the obligations of the Lessee to pay Basic Rent hereunder shall terminate as of the Termination Date and the Lessee shall comply with Section 15; otherwise this Lease shall continue in full force and effect.

The Termination Value of each Unit as of the Termination Date shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule D hereto opposite such date.

SECTION 14. Right of First Refusal.

In the event the Owner elects to sell any Units to third parties at the expiration of the term of this Lease other than a termination of this Lease pursuant to Section 16.2, the Lessee shall be given written notice of such election prior to the expiration of the term of this Lease (such date being hereinafter called the "Expiration Date"). In the event that the Owner shall receive, prior to 90 days after the Expiration Date, a bona fide offer in writing from another party to purchase the Units and the Owner elects to sell the Units pursuant to such offer, the Owner shall give written notice to the Lessee of such offer. Such notice shall be given to the Lessee on any date between 60 days before and 90 days after the Expiration Date and shall include the price and, if such offer was for other than solely cash, the other terms and conditions offered by the other party to the Owner. The Lessee shall have the sole right and option, for a period of 20 days from the date of delivery of such notice, to purchase the Units for cash at the price, or at the price and (after giving effect to credit standing of the Lessee at the time of exercise of such purchase right) on substantially similar terms and conditions, at which the Units are proposed to be sold. The Lessee shall exercise such purchase right by delivery to the Owner of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Owner or (ii) 45 days after the Expiration Date. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be extended upon the same terms and conditions set forth herein from the Expiration Date or the date such notice is delivered to the Owner, as the case may be, until the date of such purchase.

SECTION 15. Return of Units Upon Expiration of Term.

On or prior to the termination of the term of this Lease or as soon as practicable on or after the

termination of the term of this Lease and in any event not later than 90 days after the termination of the term of this Lease, the Lessee will cause each Unit to be transported to such point as it shall designate immediately prior to such termination and will arrange for storage of such Unit on behalf of the Owner at such point, provided that the Owner shall have the option to designate an alternative point for storage within a 500 mile radius of Core, Virginia. Each Unit shall be stored for a period commencing on the date of its arrival at any such point (whether designated by the Owner or the Lessee) and extending thereafter to a date not later than 120 days from the date at which at least 95% of such Units are first placed in storage pursuant to this Section 15. If the Lessee has designated the point of storage, the assembly, transportation, delivery and storage of such Unit shall be at the expense and risk of the Lessee; if the Owner has designated the point of storage, the assembly, transportation and delivery of such Unit shall be at the expense and risk of the Lessee and storage shall be at the risk of the Lessee but the expense of storage shall be divided equally between the Owner and the Lessee. During any such storage period the Lessee will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same. The Lessee shall not be liable for any injury to or the death of any person exercising, either on behalf of the Owner or any prospective purchaser or user, the foregoing rights of inspection except in the case of negligence or willful wrongdoing of the Lessee or of its employees or agents and except to the extent otherwise provided by law. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Owner pursuant to this Section 15 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) have attached or affixed thereto any Part title to which is in the Owner pursuant to Section 9.4 and have removed therefrom at Lessee's expense any Part or Addition title to which is in the Lessee or any other person pursuant to Section 9.4, and (iii) meet the standards then in effect under the Interchange Rules of the Association

of American Railroads, the Interstate Commerce Commission and the United States Department of Transportation, if applicable, and all other applicable rules of any governmental agency or other organization with jurisdiction. The lining of each Unit returned to the Owner pursuant to this Section 15 shall be in the condition required by Section 9.3. If any Unit suffers a Casualty Occurrence during any storage period provided for in this Section 15, the Lessee shall pay to the Owner the Casualty Value of such Unit in the amount and on the date required by Section 7. All gross amounts earned in respect of any Unit shall, from and after the termination of this Lease as to such Unit, belong to and be the property of the Owner. In the event that by the 120th day after the termination of the original or any extended term of this Lease the Lessee has not, at the request of the Owner, caused at least 95% of the Units to be transported to such point or points as shall have been designated by the Owner pursuant to this Section 15, the Lessee shall pay to the Owner the per diem interchange multiplied by the number of Units equal to the difference between 95% of such Units and the number of Units previously delivered pursuant to this Section 15 (such number to be determined on each day) for each day from such 120th day to the date on which at least 95% of the Units have been so transported. If, after the termination of the storage period provided in this Section 15, any Units have not been so transported, the Lessee shall pay to the Owner the per diem interchange for each Unit not so transported for each day after the end of such storage period until such Unit or Units have been so transported.

On the date of the expiration of the original term of this Lease, the Lessee will deliver to the Owner a certificate of an officer of the Lessee dated such date to the effect that no Default or Event of Default had occurred or was continuing as of such date. On the corresponding day of each calendar month thereafter (or on the last day of any calendar month which does not have a corresponding day), the Lessee will deliver to the Owner a certificate of an officer of the Lessee dated such date, covering each Unit returned since the date of the previous certificate delivered pursuant to this sentence (each Unit theretofore returned in the case of the first such certificate) and shall apply to each such Unit as of the date such Unit was returned pursuant to this Section 15, stating that (a) no Liens, (except Liens resulting from claims against the Owner) were, as of such date, imposed on or with

respect to any such Unit, any accession thereto, or the interest of the Owner therein; (b) such Units have been returned to the Owner pursuant to this Section 15 in the same operating order, repair and condition required by the first paragraph of this Section 15 and (c) the Lessee no longer has any interest in such Units under the Lease or otherwise.

#### SECTION 16. Defaults; Remedies.

16.1. Defaults. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(a) payment of any Basic Rent or payment in respect of any Casualty Occurrence pursuant to Section 7 or payment in respect of any termination of this Lease pursuant to Section 13 shall not be made by or on behalf of the Lessee, and such failure to make payment shall continue for five days after such payment is due; or

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof; or

(c) the Lessee shall permit or suffer the operation of any Unit at any time at which insurance complying with the requirements of Section 7.2 is not in effect with respect to such Unit; or

(d) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement or the Lease Assignment, and such default shall continue for 30 days after written notice from the Owner, the Agent or any Lender to the Lessee specifying the default and demanding that the same be remedied; or

(e) the Guarantor shall default in the obligations or performance of any covenant to be observed or performed by the Guarantor under the Participation Agreement, and such default (other than a default in the payment of Basic Rent, as to which there shall

be no grace other than as provided in clause (a) of this Section 16) shall continue for 30 days after the Guarantor or the Lessee shall have obtained knowledge of the same; or

(f) any representation or warranty made (i) by the Lessee herein or in the Participation Agreement or the Lease Assignment or in any statement or certificate furnished to the Owner, the Agent or any Lender pursuant to or in connection with this Lease, the Participation Agreement or the Lease Assignment is untrue in any material respect as of the date of issuance or making thereof, or (ii) by the Guarantor in or pursuant to or in connection with the Participation Agreement or in any statement or certificate furnished by the Guarantor to the Owner pursuant to or in connection with this Lease or the Participation Agreement proves untrue in any material respect as of the date of issuance or making thereof; or

(g) either the Lessee or the Guarantor shall (i) be generally not paying its debts as they become due, (ii) file, or consent by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, (iii) make an assignment for the benefit of its creditors, (iv) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, or (v) take corporate action for the purpose of any of the foregoing; or

(h) a court or governmental authority of competent jurisdiction shall enter an order, appointing, without consent by the Lessee or the Guarantor, as the case may be, a custodian, receiver, trustee or other officer with similar powers with respect to the Lessee or the Guarantor, as the case may be, or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Lessee or the Guarantor, as the case may be, or if any such petition shall be filed against the Lessee

or the Guarantor, as the case may be, and such petition shall not be dismissed within 30 days; or

(i) default shall be made in the payment of the principal of or interest on any indebtedness of the Lessee which default results or could result in indebtedness of an aggregate principal amount in excess of \$25,000 becoming immediately due and payable, unless such default is, in the Owner's reasonable opinion, being contested in good faith and during the pendency of such contest such indebtedness shall not be required to be paid; or

(j) in excess of 22 of the Units shall not have been lined in accordance with the provisions of the Lithcote Agreement or the Safety Railway Agreement, as appropriate, on or prior to the 6th Rent Payment Date;

then the Owner may exercise any of the remedies set forth in Section 16.2. The Lessee shall deliver to the Owner and the Agent, promptly upon any responsible officer's becoming aware of any condition which constitutes, or which with notice or lapse of time or both would constitute, an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 16.1, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of such official's operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

16.2. Remedies. If an Event of Default shall have occurred and be continuing, the Owner, at its option, may, by notice in writing to the Lessee terminate the term of this Lease with respect to all Units then subject thereto, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Owner may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns,

to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Owner shall nevertheless have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing accrued Basic Rent pro rata to such date) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Owner, in its sole discretion, shall specify:

(x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the rentals which the Owner reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in such case on the basis of an 8% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; or

(y) an amount equal to the excess, if any, of the Casualty Value as of the Rent Payment Date on or next preceding the date of termination over the amount the Owner reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time,

provided that in the event the Owner shall have sold or leased any Unit as permitted by this Section 16.2, the Owner, in lieu of collecting any amounts payable to the Owner by the Lessee pursuant to the preceding subparagraphs (x) and (y) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Owner and the Lessee shall pay to the Owner on the date of such sale or leasing, as the case may be, as liquidated damages for loss of a bargain and not as a penalty



(i) in the case of such sale, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Rent Payment Date on or next preceding the date of termination, over the net proceeds of such sale, and

(ii) in the case of such leasing, an amount equal to the excess, if any, of the present value of all rental for such Unit which would otherwise have accrued hereunder from the date of termination to the end of the term of this Lease as to such Unit over the sum of (I) the then present value of all rental for such Unit required under such new lease plus (II) the then present value of the rental (if any) which the Owner reasonably estimates to be obtainable for the Unit during the period commencing on the termination of such new lease and ending on the date the term of this Lease would have terminated if it had not been terminated early due to default, each such present value to be computed in each case on the basis of an 8% per annum discount, compounded, in the case of rental which is estimated under Clause (II) of this subparagraph, monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated and, in the case of rental under such new lease, periodically from the respective dates upon which such rental shall be payable thereunder.

The remedies in this Lease provided in favor of the Owner shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity, including, without limitation, the right of the Owner to proceed by appropriate court action or actions at law or in equity or otherwise to enforce performance by the Lessee of the applicable covenants of this Lease and the Participation Agreement or to recover damages for the breach thereof, whether before, during, or after an Event of Default hereunder.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the

exercise of the Owner's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The Lessee hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder and agrees to make such rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Owner to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies; and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Owner.

#### SECTION 17. Return of Units Upon Default.

If the term of this Lease shall be terminated pursuant to Section 16 the Lessee shall forthwith deliver or cause to be delivered possession of the Units to the Owner and shall give or cause to be given prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Owner pursuant to this Section 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) have attached or affixed thereto any Part title to which is in the Owner pursuant to Section 9.4 and have removed therefrom at Lessee's expense any Part or Addition title to which is in the Lessee or any other person pursuant to Section 9.4, and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, the Interstate Commerce Commission, and the United States Department of Transportation, if applicable, and all other applicable rules of any governmental agency or other organization with jurisdiction. The lining of each Unit returned to the Owner pursuant to this Section 17 shall be in the condition required by Section 9.3. For

the purpose of delivering possession of any Unit or Units to the Owner as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) cause any or all of the Units to be transported to such location or locations as shall reasonably be designated by the Owner, and there assembled,

(b) furnish and arrange for the Owner to store any or all of the Units on any lines of railroad or premises approved by the Owner until such Units have been sold, leased or otherwise disposed of by the Owner, and

(c) cause any or all of the Units to be transported to such interchange point or points as shall be designated by the Owner upon any sale, lease or other disposal thereof.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee (and the Lessee will maintain the insurance required by Section 7.2 of this Lease to be maintained during this period) and are of the essence of this Lease; and, upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. In the event that the Units or any thereof are sold, the Lessee shall pay to the Owner the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section

17, the Lessee hereby irrevocably appoints the Owner as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Owner, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

SECTION 18. Recording; Further Assurances.

The Lessee, at its own expense, will cause this Lease, the Conditional Sale Agreement, the Assignment, the Security Agreement, the Lease Assignment, any sublease permitted by Section 11, and any other assignment or transfer hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303 or such successor thereto as may then be in effect, to the full extent required to protect the rights intended to be created in the Owner and the Agent hereunder and thereunder.

The Lessee will cause to be done, executed, acknowledged and delivered all such further acts, conveyances and assurances as the Owner, each Lender or the Agent shall require for accomplishing the purposes of this Lease and the other Basic Agreements. Upon the expiration of the term with respect to any Unit for any reason, the Lessee will execute such assignments of warranties and other rights and interests of the Lessee relating to such Unit as the Owner may request. The Lessee will take, or cause to be taken, such action with respect to the recording, filing, re-recording and re-filing of this Lease, the Conditional Sale Agreement, the Assignment, the Security Agreement, the Lease Assignment or any amendments and supplements to any thereof, and any financing statements, continuation statements or other instruments (including, without limitation, any financing or other statements or instruments relating to a change of name or location by the Owner or the Lessee), in such manner and in such places as is necessary, or as shall be deemed desirable by the Owner, the Agent, a Majority in Interest of Lenders or counsel thereto, to establish, perfect, preserve and protect, so long as the Conditional Sale Indebtedness shall remain outstanding, the security interests created by the Conditional Sale Agreement, the Assignment, the Security Agreement and the Lease Assignment, and shall furnish to the Owner and the Agent evidence of all actions taken by it

under this and the preceding sentences. The Lessee will furnish to the Owner, the Lenders and the Agent annually after the execution hereof (but not later than March 15th of each year), commencing with the year 1981, an opinion of counsel satisfactory to the Owner and a Majority in Interest of Lenders stating either: (i) that in the opinion of such counsel such action has been taken with respect to the recording, filing, re-recording and re-filing of this Lease, the Conditional Sale Agreement, the Assignment, the Security Agreement, the Lease Assignment (and any amendments or supplements to any thereof) and any financing statements or other instruments as is necessary to maintain the perfection of the security interests created thereby and reciting the details of such action; or (ii) that in the opinion of such counsel no such action is necessary to maintain the perfection of such security interests.

SECTION 19. Owner's Right To Perform for the Lessee.

If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable costs and expenses of the Owner incurred in connection with such performance or compliance, together with interest on such amount at the rate of 12% per annum, shall be payable by the Lessee upon demand.

SECTION 20. No Recourse.

No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Owner or the Lessee, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers, as such, or beneficiaries being forever released as a condition of and as consideration for the execution of this Lease.

SECTION 21. Notices.

All notices, requests, demands and other communications required or contemplated by the provisions of this Lease shall, unless otherwise specified, be in writing or by Telex or by telegraph, and shall be deemed to have been given or made on the fifth Business Day after deposit thereof in the United States mails, certified, first-class postage prepaid, or when received if sent by telex or telegraph or delivered by hand, addressed as follows:

To the Lessee: Winchester and Western  
Railroad Company  
c/o UNIMIN Corporation  
50 Locust Avenue  
New Canaan, Connecticut 06840  
Attention: Vice President -  
Finance

To the Owner: Merrill Lynch Leasing Inc.  
One Liberty Plaza  
165 Broadway  
New York, New York 10080  
Attention: John C. Murphy,  
Vice President

To the Agent: The Connecticut Bank and Trust  
Company  
One Constitution Plaza  
Hartford, Connecticut 06115  
Attention: Corporate Trust  
Department

or as to any such party, or its assignee, to such other address as such party or assignee may from time to time specify by notice hereunder.

SECTION 22. Lease Subject to Conditional Sale Agreement;  
Enforcement by Agent; Original Counterpart.

If and so long as this Lease is assigned to the Agent (or any successor thereto) for collateral purposes, wherever the term "Owner" is used in this Lease it shall also apply and refer to the Agent and any successors

thereto unless the context shall otherwise require, provided that the Agent shall not be subject to any liabilities or obligations under this Lease. The fact that the Agent and the Lenders are specifically named in certain provisions of this Lease shall not be construed to mean that the Agent or the Lenders (and any successors thereto) are not entitled to the benefits of other provisions where only the Owner is named or where only the Agent or the Lenders, as the case may be, are named.

All rights and obligations of the Lessee under this Lease and in and to the Equipment are subject to the rights of the Agent under the Security Documents. If an event of default under any of the Security Documents (which includes, among other things, any Event of Default hereunder) shall have occurred and be continuing, the Agent may, as provided in the Lease Assignment, take any action permitted under Section 19 of the Conditional Sale Agreement or under Section 15 of the Security Agreement or under Section 6 of the Lease Assignment, and may exercise all of the rights and remedies of the Owner under Section 16 and 17 of this Lease, provided that the Agent may not, in the absence of an Event of Default hereunder, take any action under this Lease or the Lease Assignment which would interfere with the rights of the Lessee hereunder, including the right to possession and use of the Equipment, except in accordance with the terms and conditions hereof.

Until the Lessee receives notice from the Agent stating that the Agent has received the full Conditional Sale Indebtedness, together with interest and all other indebtedness and payments as provided in the Conditional Sale Agreement and the Participation Agreement, all amounts payable by the Lessee hereunder to the Owner, other than Excepted Payments, shall be paid by the Lessee to the Agent at its office located at the address set forth in Section 21 of this Lease or at such other office as the Agent may specify from time to time by notice to the Lessee. All such payments to the Agent shall be made in the manner and by the time specified in Section 3.3, and the right of the Agent to receive all such payments shall not be subject to any defense, counterclaims, set-off or any right or claim of any kind which Lessee may be able to assert against the Owner.

To the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable

jurisdiction), no security interest in this Lease may be created by the transfer or possession of any counterpart hereof other than the original counterpart which shall be identified as the counterpart containing the receipt therefor executed by the Agent on or immediately following the signature page hereof.

## SECTION 23. Miscellaneous.

23.1. Waivers; Modifications. No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought; no such instrument shall be effective unless a signed copy thereof shall have been delivered to the Owner, the Lessee and the Agent.

23.2. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof; and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

23.3. Effect of Lease. This Amended and Restated Lease exclusively and completely states the rights of the Owner and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto, except the other Basic Agreements and, to the extent not inconsistent, the Participation Agreement dated as of June 25, 1979 among the Owner, the Lessee and the Guarantor. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Owner and the Lessee.

23.4. Binding Effect; Successors and Assigns. The terms and provisions of this Lease and the respective rights and obligations of the parties hereunder shall be binding upon, and inure to the benefit of, their respective successors and (to the extent assignments are permitted by this Lease) assigns.



23.5. No Third Party Beneficiaries Except as Specified. Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Agent, the Lenders and their respective successors and assigns, each of which shall be deemed to be a third-party beneficiary hereof) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

23.6. Captions; References. The captions in this Lease and in the table of contents are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. References herein to sections and subdivisions without reference to the document in which they are contained are references to this Lease.

23.7. Governing Law. This Lease is being made and delivered in, and shall be governed by and construed in accordance with the laws of, the State of New York, provided that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

MERRILL LYNCH LEASING, INC.

[Seal]

By John J. Murphy  
Title: Vice President

Attest:

Michael J. Probert  
Title: Asst Secy

WINCHESTER AND WESTERN RAILROAD  
COMPANY

[Seal]

By Kevin F. Crawford  
Title: TREASURER

Attest:

Mary Jane Isenby  
Title: SECRETARY

ALL RIGHT, TITLE AND INTEREST OF MERRILL LYNCH LEASING INC. IN AND TO THIS LEASE, AS IT MAY FROM TIME TO TIME BE AMENDED, MODIFIED OR SUPPLEMENTED, HAS BEEN ASSIGNED TO AND IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF THE CONNECTICUT BANK AND TRUST COMPANY, AS AGENT. AN ORIGINAL AND SEVERAL COUNTERPARTS OF THIS AGREEMENT HAVE BEEN EXECUTED, BUT, AS SET FORTH IN SECTION 22, NO SECURITY INTEREST IN THIS LEASE MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART, WHICH IS IDENTIFIED AS THE COUNTERPART CONTAINING A RECEIPT THEREFOR EXECUTED BY SUCH AGENT ON THIS PAGE.

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK)

On the 7<sup>th</sup> day of November, in the year 1979, before me personally came Kevin F. Crawford, to me known, who being by me duly sworn, did depose and say that he resides at *Wilton, Connecticut*, that he is Treasurer of Winchester and Western Railroad Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

[NOTARIAL SEAL]

My Commission expires

*Virginia I. Flandrau*  
VIRGINIA I. FLANDRAU  
NOTARY PUBLIC, State of New York  
No. 24-4669365  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires March 30, 1980

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK)

On the 7<sup>th</sup> day of November, in the year 1979, before me personally came John C. Murphy, to me known, who being by me duly sworn, did depose and say that he resides at *Ardsley, New York*, that he is Vice President of Merrill Lynch Leasing Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

[NOTARIAL SEAL]

My Commission expires

*Virginia I. Flandrau*  
VIRGINIA I. FLANDRAU  
NOTARY PUBLIC, State of New York  
No. 24-4669365  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires March 30, 1980

SCHEDULE A

Original Equipment = 4000 Cubic Foot,  
100 Ton Covered Hopper Cars

<u>Number of Units</u>	<u>Manufacturer's Specification</u>	<u>W&amp;W Serial Numbers</u>
50	H-100-780505, dated May 11, . 1978 (revised October 30, 1978 (rev. A))	WW 3001 through WW 3050 (both inclusive)

SCHEDULE B

Additional Equipment = 4000 Cubic Foot,  
100 Ton Covered Hopper Cars

<u>Number of Units</u>	<u>Manufacturer's Specification</u>	<u>W&amp;W Serial Numbers</u>
175	H-100-780505, dated May 11, 1978 (revised October 30, 1978 (rev. A))	WW 3051 through WW 3225 (both inclusive)

# SCHEDULE C

## CASUALTY VALUES

<u>Rent Payment Number</u>	<u>Percent of Cost</u>	<u>Rent Payment Number</u>	<u>Percent of Cost</u>	<u>Rent Payment Number</u>	<u>Percent of Cost</u>	<u>Rent Payment Number</u>	<u>Percent of Cost</u>
1	86.69533	28	88.43775	55	86.47767	82	80.47670
2	85.80340	29	88.45690	56	86.31750	83	80.18820
3	85.99295	30	88.45710	57	86.15594	84	79.89714
4	86.18456	31	88.45752	58	85.99304	85	79.60349
5	86.37812	32	88.43882	59	85.81633	86	79.30208
6	86.54638	33	88.42010	60	85.63809	87	78.99792
7	86.71638	34	88.40141	61	85.45837	88	78.69107
8	86.86064	35	88.36341	62	85.26477	89	78.38145
9	87.00651	36	88.32526	63	85.06942	90	78.06766
10	87.15401	37	88.28691	64	84.87240	91	77.75108
11	87.27554	38	88.22917	65	84.67370	92	77.43021
12	87.39845	39	88.17096	66	84.46439	93	77.10647
13	87.52273	40	88.11241	67	84.25327	94	76.77984
14	87.62091	41	88.05343	68	84.03144	95	76.44886
15	87.72019	42	87.97822	69	83.80768	96	76.11494
16	87.82062	43	87.90248	70	83.58196	97	75.77803
17	87.92221	44	87.81030	71	83.34540	98	75.43668
18	88.00228	45	87.71741	72	83.10677	99	75.09188
19	88.08336	46	87.62385	73	82.86605	100	74.74362
20	88.14273	47	87.51365	74	82.61440	101	74.39184
21	88.20284	48	87.40261	75	82.36046	102	74.03890
22	88.26373	49	87.29069	76	82.10429	103	73.68244
23	88.30273	50	87.16204	77	81.84585	104	73.32475
24	88.34228	51	87.03228	78	81.57992	105	72.96351
25	88.38245	52	86.90148	79	81.31166	106	72.59864
26	88.40056	53	86.76961	80	81.03579	107	72.23251
27	88.41895	54	86.62422	81	80.75748	108	71.86271

## Schedule C (cont'd)

<u>Rent Payment Number</u>	<u>Percent of Cost</u>	<u>Rent Payment Number</u>	<u>Percent of Cost</u>	<u>Rent Payment Number</u>	<u>Percent of Cost</u>	<u>Rent Payment Number</u>	<u>Percent of Cost</u>
109	71.48923	136	60.45990	163	48.01546	190	34.56444
110	71.11442	137	60.01207	164	47.54194	191	34.05612
111	70.73520	138	59.57179	165	47.06134	192	33.54007
112	70.35157	139	59.12531	166	46.57355	193	33.01620
113	69.96349	140	58.68638	167	46.09597	194	32.50410
114	69.57710	141	58.24127	168	45.61129	195	31.98407
115	69.18625	142	57.78984	169	45.11942	196	31.45607
116	68.79707	143	57.34597	170	44.63772	197	30.99192
117	68.40340	144	56.89586	171	44.14866	198	30.39633
118	68.00516	145	56.43940	172	43.65220	199	29.86472
119	67.60853	146	55.99046	173	43.14823	200	29.34148
120	67.20736	147	55.53479	174	42.65529	201	28.80605
121	66.80158	148	55.07233	175	42.15488	202	28.25829
122	66.39736	149	54.60299	176	41.66546	203	27.71877
123	65.98784	150	54.14318	177	41.16864	204	27.16690
124	65.57305	151	53.67653	178	40.66436	205	26.60257
125	65.15286	152	53.21940	179	40.17107	206	26.04631
126	64.73723	153	52.75549	180	39.67031	207	25.47751
127	64.31623	154	52.28472	181	39.16207	208	24.89607
128	63.89977	155	51.82344	182	38.66477	209	24.30186
129	63.47792	156	51.35534	183	38.15983	210	23.71383
130	63.05070	157	50.88038	184	37.64714	211	23.11296
131	62.62792	158	50.41484	185	37.12666	212	22.51822
132	62.19971	159	49.94229	186	36.61798	213	21.91057
133	61.76605	160	49.46264	187	36.10153	214	21.28986
134	61.33683	161	48.97581	188	35.59690	215	20.67509
135	60.90144	162	48.49920	189	35.08455	216	20.00000

The foregoing percentages have been calculated without regard to recapture of the Investment Credit. Consequently, the above Casualty Values shall each be increased by an amount equal to the sum of pre-tax equivalents of the Investment Credit lost to the Owner computed in accordance with the marginal federal, state and local income tax rate of the Owner at the date of payment of such Casualty Value. No such increase shall occur in the event and to the extent that Casualty Value is payable with respect to any Unit described on Schedule E hereto. Promptly upon receipt of the notice of Casualty Occurrence, the Owner shall notify the Lessee and the Agent of the applicable marginal tax rates and such other information as may be required to compute the increase in Casualty Value pursuant to the preceding sentence.

# SCHEDULE D

## TERMINATION VALUES

<u>Rent Payment Number</u>	<u>Percent of Cost</u>	<u>Rent Payment Number</u>	<u>Percent of Cost</u>	<u>Rent Payment Number</u>	<u>Percent of Cost</u>	<u>Rent Payment Number</u>	<u>Percent of Cost</u>
		136	60.45990	163	48.01546	190	34.56444
		137	60.01207	164	47.54194	191	34.05612
		138	59.57179	165	47.06134	192	33.54007
		139	59.12531	166	46.57355	193	33.01620
		140	58.68638	167	46.09597	194	32.50410
		141	58.24127	168	45.61129	195	31.98407
		142	57.78984	169	45.11942	196	31.45607
		143	57.34597	170	44.63772	197	30.99192
		144	56.89586	171	44.14866	198	30.39633
		145	56.43940	172	43.65220	199	29.86472
		146	55.99046	173	43.14823	200	29.34148
120	67.20736	147	55.53479	174	42.65529	201	28.80605
121	66.80158	148	55.07233	175	42.15488	202	28.25829
122	66.39736	149	54.60299	176	41.66546	203	27.71877
123	65.98784	150	54.14318	177	41.16864	204	27.16690
124	65.57305	151	53.67653	178	40.66436	205	26.60257
125	65.15286	152	53.21940	179	40.17107	206	26.04631
126	64.73723	153	52.75549	180	39.67031	207	25.47751
127	64.31623	154	52.28472	181	39.16207	208	24.89607
128	63.89977	155	51.82344	182	38.66477	209	24.30186
129	63.47792	156	51.35534	183	38.15983	210	23.71383
130	63.05070	157	50.88038	184	37.64714	211	23.11296
131	62.62792	158	50.41484	185	37.12666	212	22.51822
132	62.19971	159	49.94229	186	36.61798	213	21.91057
133	61.76605	160	49.46264	187	36.10153	214	21.28986
134	61.33683	161	48.97581	188	35.59690	215	20.67509
135	60.90144	162	48.49920	189	35.08455	216	20.00000



SCHEDULE E

Used Units  
4000 Cubic Foot, 100 Ton  
Covered Hopper Cars

<u>Number of Units</u>	<u>W&amp;W Serial Numbers</u>
7	WW 3059 WW 3060 WW 3063 WW 3065 WW 3066 WW 3070 WW 3071